

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5430 of 1994

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For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO

DHARMESHKUMAR H.DARJI

Versus

MANAGING DIRECTOR, G D D C LTD

Appearance:

MR RV DESAI for Petitioner
MR KM PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 30/04/98

ORAL JUDGEMENT :

The petitioner's father, who was working for decades on a permanent post as a labourer in the Despatch Department of the respondent- Gujarat Dairy Development Corporation Limited, unfortunately has lost vision of his both eyes. The petitioner- son as well as his father approached the respondent authorities requesting that the son be given employment as the petitioner's family is in

a very difficult economic situation. The letters submitted to the authorities are at Annexures 'D', 'E' and 'F'.

2. The respondent Corporation gave a reply on 5.4.1993 acknowledging the representations of the petitioner and his father. The reply stated that the representations were considered sympathetically; the petitioner - son would be given an appointment as a Peon at the respondent's factory at Rajkot on the resignation of the father. The petitioner's father was, therefore, asked to submit his resignation and after resignation is sanctioned, petitioner's son was asked to contact the respondent Dairy and appointment order would be issued to the son. Relying on this promise and assurance of the respondent Corporation, the petitioner's father resigned. It was accepted. Thereafter, the petitioner- son was given an order of appointment dated 26.10.1993, which was on regular basis on initial probation of six months and other usual conditions.

3. However, within ten days of issuance of order of appointment, vide communication dated 6.11.1993, Annexure 'C', the same is cancelled with immediate effect.

4. This action of the respondent is challenged in this petition.

5. The contention of the respondent is that the appointment was made on compassionate grounds, but the appointment on compassionate grounds could be made only in case of an employee dying while in service. In the present case the employee (the petitioner's father) had not died, but had become handicapped because of the loss of vision of both the eyes. Therefore, during life time of the employee, his dependent could not be given compassionate appointment contrary to the policy and guidelines of compassionate appointments. Reliance is also placed on the judgement of the Supreme Court in the case of Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambekar and another, AIR 1994 SC 2148, wherein mandamus was sought for appointment on compassionate grounds and the Supreme Court held that compassionate appointment cannot be directed by the Court contrary to statutory provisions.

6. No compassionate appointment is sought by the orders of the Court. What is sought is the relief on the equitable doctrine of promissory estoppel. On the promise given by the respondent Corporation, the petitioner's father acted to his own detriment and

resigned. The resignation was tendered, relying on the assurance given by the respondent Corporation. If the Corporation felt that this appointment should not be given, it ought not to have given such an assurance of giving appointment to the son and should not have taken resignation of the father. After making the father and the son to act to their detriment on their promise, the respondent Corporation cannot, now, go back on its word and promise; and cancel the appointment. The action of the respondent is grossly unjust, unequitable and wholly untenable on the facts, equity and law.

7. It would be a misnomer to call that this is a compassionate appointment as contemplated by the policy of compassionate appointment. It is true that the policy provides for giving compassionate appointment to the dependent of the deceased employee. However, that cannot be said to be a prohibiting clause for appointment in appropriate and deserving cases, such as the present one, wherein the total incapacity of the father of being totally blind had deprived the family of bread winner. The respondent would have been liable to follow certain procedures and make certain payments, had the employee to be compulsorily retired on the ground of invalidity or incapacity. The respondent corporation got relieved from those liabilities of the invalid employee by getting voluntary resignation. He was given the assurance that his son would be given the appointment on sympathetic consideration. Therefore, even if the case does not fall within the scope of Circular governing compassionate appointments, it cannot be said that the appointment made in such circumstances was invalid and is in any manner illegal. The action of the respondent corporation is wholly unjustified.

8. Learned counsel for the respondent has stated that the respondent corporation is a sick unit and BIFR proceedings are pending since 1994 and therefore, this proceedings be stayed and no direction be given. At this stage, the proceeding are not required to be stayed, but have to be decided. The question of stay of proceedings might arise, if at all, when the question of enforcement of recovery becomes necessary. At this stage there is no need to stay proceedings.

9. In the result the petition succeeds and rule is made absolute. The impugned order of termination/cancellation of appointment order dated 6.11.1993 is quashed and set aside and the petitioner is directed to be reinstated in service with full back wages from 6.11.1993 till the date of reinstatement as if the

petitioner had been in service. The respondent is directed to comply with this direction within two months from today.

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